

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DARRELL KING,

Petitioner,

v.

U.S.P. VICTORVILLE WARDEN,

Respondent.

Case No. 5:25-00456 TJH (ADS)

ORDER SUMMARILY DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

I. INTRODUCTION

Pending before the Court is a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) filed by Petitioner Darrell King. (Dkt. No. 1.) Upon filing, Petitioner was cautioned that failure to pay the filing fee or file a Request to Proceed In Forma Pauperis (“IFP Request”) could result in dismissal of the action. (Dkt. No. 2.) On May 8, 2025, the Court issued an Order to Show Cause why the Petition should not be dismissed because Petitioner did not pay the filing fee or file an IFP Request. (Dkt.

No. 4.) Petitioner did not file a response to the Order to Show Cause and has not paid the filing fee or filed an IFP Request. For these reasons, the case must be dismissed.

II. FAILURE TO PROSECUTE AND COMPLY WITH COURT ORDERS

The case must be dismissed because Petitioner has failed to prosecute this habeas petition and comply with court orders. On February 19, 2025, a notice of discrepancies was issued that cautioned Petitioner that failure to pay the filing fee or file an IFP Request may result in dismissal of the action. (Dkt. No. 2.) On May 8, 2025, the Court ordered Petitioner to show cause why the Court should not dismiss this action because Petitioner did not pay the court filing fee or file an IFP Request. (Dkt. No. 4.) The Order expressly cautioned Petitioner that failure to respond by May 15, 2025, would result in a recommendation from the Magistrate Judge that the action be dismissed pursuant to Federal Rule of Civil Procedure 41(b). (*Id.* at 1.) As of the date of this Order, Petitioner has not responded to the Order to Show Cause, paid the required filing fee, or filed an IFP Request.

Petitioner's failure to respond or otherwise address the filing fee issue despite a Court order to do so reflects a lack of prosecution of the case and failure to comply with the Court's orders. In *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988), the Ninth Circuit cited the following factors as relevant to the Court's determination of whether to dismiss an action for failure to prosecute: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Id.*

Upon consideration of the five *Carey* factors, the Court finds that Petitioner's failure to prosecute his case and failure to comply with the Court's Orders warrant

1 dismissal. The first two Carey factors—the public's interest in expeditiously resolving
2 this litigation and the Court's interest in managing the docket—weigh in favor of
3 dismissal. The Court cannot hold this case in abeyance indefinitely awaiting Petitioner's
4 response to the Court's directive. The third factor, risk of prejudice to Respondent, also
5 weighs in favor of dismissal since a presumption of injury arises from the occurrence of
6 unreasonable delay in prosecuting an action. Anderson v. Air West, Inc., 542 F.2d 522,
7 524 (9th Cir. 1976). The fourth factor, the public policy favoring disposition of cases on
8 their merits, is greatly outweighed by the factors in favor of dismissal.

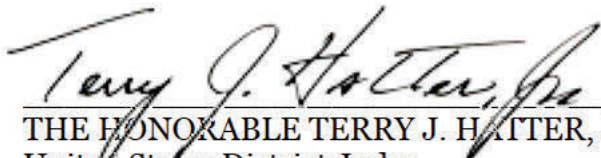
9 Furthermore, Petitioner has already been cautioned of the consequences of his
10 failure to prosecute and ordered to show cause why the action should not be dismissed.
11 Petitioner has been afforded the opportunity to do so yet has not responded. No
12 sanction lesser than dismissal is feasible here. Thus, dismissal of this action is
13 warranted under Federal Rule of Civil Procedure 41(b) and Local Rule 7-12.

14 **III. CONCLUSION**

15 IT IS THEREFORE ORDERED that this action be dismissed pursuant to Federal
16 Rule of Civil Procedure 41(b) and Local Rule 7-12.

17 IT IS SO ORDERED.

18
19 Dated: June 27, 2025

20 
THE HONORABLE TERRY J. HATTER, JR.
United States District Judge

21
22 Presented by:

23 /s/ Autumn D. Spaeth
24 THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge